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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Eighteenth session

SUMMARY RECORD OF THE 3rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 28 April 1998, at 10 a.m.

Chairperson: Mr. ALSTON

later: Mr. RATTRAY

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS (agenda item 6)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT

Initial report of Sri Lanka (E/1990/5/Add.32; HRI/CORE/1/Add.48; E/C.12/Q/SRI.1; written replies by the Sri Lankan delegation (document without symbol circulated in English only))

1. At the invitation of the Chairperson, Mr. Maliyadde, Ms. Jegarajasingham, Ms. Perera and Ms. Wijewardena (Sri Lanka) took places at the Committee table.

2. Mr. MALIYADDE (Sri Lanka), presenting his country's initial report, said that the political framework established in Sri Lanka since independence in 1948 aimed mainly at the realization of all human rights, including those set forth in the International Covenant on Economic, Social and Cultural Rights. Despite its relatively modest per capita income, the country had devoted considerable financial resources to raising the standard of living of the population as part of a national development strategy based on equitable human development. The achievement of the objectives envisaged in the Covenant had been facilitated by the economic liberalization begun in 1977 and the multi-party democratic system, based on universal suffrage, in existence since 1931. The principle of non-discrimination enshrined in the Constitution of Sri Lanka allowed all the inhabitants - Sinhalese, Tamils, Muslims and Burghers - to pursue those objectives on an equal footing. The political framework reflected not only the multi-ethnic nature of Sri Lankan society, but also its social and political diversity. Multi-party elections at the national and provincial levels enabled all social groups, including Tamil plantation workers, to promote their interests through their representatives. Devolution had been considered an effective means of reinforcing participation and preserving cultural identities within a multi-ethnic society. The Government proposed to move further down that road by delegating more powers to regional councils. A bill to that effect had been put before Parliament.

3. The draft new Constitution tabled by the Government was even closer to the text of the Covenant. The right to safety at work, access to health services, the right to food and the right to appropriate welfare figured prominently among fundamental rights. In addition, the gap between the rights of Sri Lankan citizens and those of other persons had been narrowed.

4. Despite many challenges, the quality of life in Sri Lanka had improved considerably since independence, mainly through government policy on income redistribution, land reform, social protection, infrastructural development and housing. The State had provided free health care, near-total child immunization coverage and free education for the past 50 years. Those efforts had produced very positive results in regard to the rights enshrined in the Covenant. They had helped, for example, to push up the United Nations Development Programme (UNDP) human development indicator to 0.71. Life expectancy had increased from 60 in 1948 to 73 in 1997, while the literacy rate had gone up from 64 per cent to 90 per cent. Maternal and infant

mortality rates had declined sharply. In combination with constructive economic policies, such achievements had boosted growth, employment and income generation. Unemployment had declined almost to single digit figures in 1997 and per capita income was the highest in South Asia, at US$ 760. Such a context had helped create an alert, dynamic civil society. A large number of non-governmental organizations had made invaluable contributions to social progress and rural development through their efforts in the areas of agriculture, health, family planning and education. Civil society had also played a great part in the promotion of the rights of women, children, the disabled and the elderly. Further progress was needed, however, particularly in combating nutritional deficiency, unemployment and poverty. The displacement of persons through terrorism had created new challenges and the Government, with the assistance of international organizations and NGOs, had taken steps to meet those challenges.

5. Sri Lanka had worked to promote and protect economic, social and political rights not only in a domestic context but also at the international level. Thus Sri Lanka had helped to formulate and implement the 1986 Declaration on the Right to Development, and to incorporate that right into the Vienna Declaration and the mandate of the Office of the High Commissioner for Human Rights. In view of the North-South divide on the issue, Sri Lanka welcomed moves to develop indicators to measure the enjoyment of the rights set forth in the Covenant, as well as steps to enhance coordination within the United Nations system with a view to promoting those rights and the right to development in country-specific programmes.

6. Experience showed that domestic efforts to implement the rights enshrined in the Covenant were hampered by global trends. Trade liberalization had in-built drawbacks, particularly for developing countries. Globally, the economies of developing countries were more exposed to the vagaries of globalization and, domestically, unbridled growth could heighten social disparities. Those countries also needed access to financial resources on reasonable terms in order to achieve adequate standards of nutrition, health, education and basic amenities. Structural adjustment policies that prescribed cuts in expenditure in those areas could be detrimental to the objectives of the Covenant.

7. The CHAIRPERSON asked the delegation of Sri Lanka to summarize the written replies it had transmitted to the Committee, particularly on the priority concerns addressed in the first part of the list of issues to be taken up, beginning with the first six questions on the list of issues, relating to the displacement of populations caused by the armed conflict.

8. Ms. PERERA (Sri Lanka) said that successive Governments since independence had adopted a number of constitutional, legislative, judicial and administrative measures designed to address the legitimate aspirations of the minorities in Sri Lanka. The armed conflict had been triggered by the Liberation Tigers of Tamil Eelam (LTTE), who were seeking to establish a mono-ethnic state in the north and east of the country. The terrorist acts perpetrated by the LTTE flouted the economic, social and cultural rights of the population. Neither did the LTTE respect civil rights, and in particular religious freedom, as they had shown by attacking a World Heritage site in Kandy.

9. The proposals for constitutional reform currently put forward by the Government aimed to bring about an unprecedented process of devolution in Sri Lanka. In particular, they established the status of Sri Lanka as a sovereign, independent republic made up of an indissoluble union of regions, each of which would have a regional council. The legislative powers of the Central Government and of the regions were clearly demarcated in order to put an end to the current conflicts of powers. Those functions that were deemed necessary for the preservation of the nation's unity and sovereignty, notably defence and national security, were exercised exclusively by the Central Government. At the regional level, executive power was vested in a governor appointed by the President of the Republic on the proposal of the chief minister of the region. The formation of all-party boards of ministers at the regional level aimed to ensure power-sharing and to reduce political tension in the interests of the country's development. Judicial power was exercised by the regional courts, with the Supreme Court continuing to function at the national level.

10. In order to help the many displaced persons in the north and east of the country - whether Tamils, Muslims or Sinhalese - the Government attached the highest priority to the provision of humanitarian aid (foodstuffs and pharmaceutical products, at a monthly cost of around 200 million rupees), rehousing measures, the rehabilitation of areas affected by the conflict and compensation of victims. Since the clearing of the Jaffna peninsula, local elections had been held with the aim of restoring the administration in that region. The Government was supported in its humanitarian efforts by a number of international agencies and various humanitarian organizations. In December 1996, there had been 373 welfare centres housing more than 35,800 families. Displaced children were provided with schooling facilities and the Government had launched a scholarship programme for them. Some welfare centres conducted vocational training programmes for adults and children. The Ministry of Health had established a coordinating group responsible for the improvement of health services for displaced persons. Food rations conforming to the World Food Programme (WFP) recommendations were distributed in the welfare centres.

11. Mr. Rattray took the Chair.

12. Mr. PILLAY asked whether the devolution proposals presented to the people in August 1995 had been implemented and what steps had been taken to improve the lot of the 85,000 stateless Tamils.

13. Mr. CEAUSU asked whether any amendments had been made to the Constitution, what the time-frame was for the implementation of the Government's peace plan and whether any attempts had been made to renew dialogue with the representatives of the Tamil minority.

14. Mr. RIEDEL said he would like some details of steps taken to increase regional autonomy; he asked whether the representatives of the ethnic populations and groups concerned had been consulted about the government plans for power-sharing between the Central Government and the regions. It would be interesting in that regard to know why, in the list of powers of the Central Government which the delegation of Sri Lanka had transmitted to the Committee, mention was made of only one religion, namely Buddhism.

15. Mr. THAPALIA said he thought that the inability or unwillingness of successive Governments to grant Tamils genuine autonomy explained the serious humanitarian crisis the country was undergoing. It would be interesting to know why the Government refused to satisfy the aspirations of minorities and when the plan to grant autonomy to the provinces of Sri Lanka would be implemented, as well as useful to have information on the health, hygiene, housing and education situation of displaced and stateless persons.

16. Mr. SADI said he believed it was practically impossible for the Government to implement the provisions of the Covenant as long as the armed conflict continued to tear the country apart. Since the LTTE had rejected the Government's peace plan, it would be helpful to know how the Government intended to proceed in order to break the impasse. He also wondered how the Government proposed to resolve the alarming refugee situation.

17. Mr. WIMER ZAMBRANO asked what were the underlying causes - social, administrative, legal and economic - of the armed conflict and to what extent the civilian Tamil population supported the LTTE.

18. Mr. GRISSA said that people did not resort to violence and risk their lives for no reason. It was necessary to know whether, in practice, the minorities were the victims of discrimination in regard to enjoyment of the rights set forth in the Covenant.

19. Mr. ADEKUOYE said he understood that the LTTE had rejected the Government's plan for territorial devolution; he therefore wondered what the Government intended to do to break the deadlock, since neither of the two parties appeared to be in a position to win a military victory. He would also like to know whether the various minorities were equally represented at all levels of the administration.

20. Mr. AHMED asked whether the war effort did in fact absorb between 20 and 25 per cent of the gross national product, what the Government intended to do to ensure respect for economic, social and cultural rights despite the conflict, and what measures it intended to adopt in order to put an end to 15 years of war.

21. Mr. TEXIER said that, according to some sources, the Ministry of Defence and the Inspector-General of Police, who played a vital role in the distribution of humanitarian aid, had deliberately cut the amounts of foodstuffs, medicines and fertilizers distributed to the refugees; he pointed to the fact that the basic needs of the population should be met even in time of war.

22. The CHAIRPERSON asked whether the new structures that the Government proposed to put in place in order to ensure national unity were not a part of the problem, creating fears that, in the long term, the country would be divided, given that the distribution of public-sector jobs among ethnic groups in relation to their proportion of the total population might appear to contradict the desire to produce homogeneity among the regions. Was the Government really ready to consider a solution that went beyond the mere preservation of the unity of Sri Lanka?

23. Mr. PILLAY said he understood that positive discrimination was allowed in recruitment but that promotion was not granted in accordance with ethnic proportions, and he requested clarification of that point. Did the state of emergency imposed in certain regions of the country mean that economic, social and cultural rights had been suspended, like civil and political rights?

24. Ms. BONOAN-DANDAN remarked that, in its replies, the delegation of Sri Lanka frequently mentioned difficulties, problems and weaknesses without, however, indicating what measures had been taken to deal with them. The descriptions of the Government's plans and policies were not accompanied by figures on their concrete outcomes. It would also have been desirable to indicate what measures had been taken to help those suffering from mental disorders, about which the Government said only that they were inevitable in time of war. Nor was there any information on what efforts had been made to solve the problems of the elderly.

25. The Chairperson invited the delegation of Sri Lanka to summarize its written replies to questions 7 to 9.

26. Ms. WIJEWARDENA (Sri Lanka) emphasized that the current Constitution enshrined several of the rights set forth in the Covenant and that the draft new Constitution went even further. It was true that domestic legislation prevailed over the provisions of the Covenant, but the Supreme Court had ruled that courts should, as far as possible, interpret domestic legislation in accordance with international instruments. The Sri Lankan Human Rights Commission, an independent, autonomous body established in March 1997, had more extensive powers in its area of competence than the Supreme Court. Its members would in future be appointed by the President, on the recommendation of the Constitutional Council, whose establishment was provided for under the new Constitution. The current members, who belonged to different ethnic groups, had been appointed on the recommendation of the Prime Minister, taking into account the opinion of the Tamil and Muslim parties.

27. Mr. RIEDEL said he welcomed the fact that the Covenant could be invoked in the courts but noted that domestic legislation prevailed over its provisions; he asked to what extent the primacy of domestic legislation might discourage some people from availing themselves of the provisions of the Covenant in court. Moreover, what steps had been taken to let the population know that the rights set forth in the Covenant applied in Sri Lanka?

28. Mr. ADEKUOYE, referring to the discriminatory provisions of certain systems of customary law with regard to women and families, asked whether individuals who migrated to other regions continued to be subject to the customary law of their place of origin or whether the law of their new place of residence applied.

29. Mr. PILLAY requested the delegation to give concrete examples showing that the rights enshrined in the Covenant could effectively be invoked in the courts.

30. Mr. AHMED observed that, according to the Committee on the Rights of the Child, neither the Convention on the Rights of the Child nor the Sri Lankan Children's Charter were binding in domestic law. Although that opinion came

from the Committee on the Rights of the Child, it was of equal concern to the Committee on Economic, Social and Cultural Rights. All countries were obliged to incorporate into their constitution and legislation the commitment to protect the rights of the child - which Sri Lanka had not yet done.

31. The CHAIRPERSON asked whether economic, social and cultural rights were binding in the Sri Lankan legal system or not. Did the Government intend to incorporate such rights into the Constitution, in order to ensure their inviolability? The Sri Lankan Human Rights Commission appeared to have greater powers than the Supreme Court, but it would be helpful to know if it had the power to impose sanctions when the law was contravened.

32. Ms. BONOAN-DANDAN requested information on what action had been taken to make the judiciary, the armed forces and all government services more aware of the Covenant.

33. Ms. PERERA (Sri Lanka), replying to Mr. Adekuoye, said that three systems of customary law existed in Sri Lanka: Tesewalami law in the province of Jaffna, Kandyan law in the centre of the country and Muslim law. In regard to the matters governed by their provisions, the law applied to all concerned regardless of their place of residence.

34. Mr. ADEKUOYE asked whether it was possible to choose not to be subject to a given customary law.

35. Ms. PERERA (Sri Lanka) said that it was possible, particularly where the more liberal Kandyan law was concerned; in a multi-ethnic and multi-confessional society it was inevitable that a number of systems of customary law should exist side by side.

36. In reply to Mr. Pillay, she said that she was unable to give a particular example showing that economic, social and cultural rights could effectively be invoked in the courts, but she assured him that, in all the country's judicial bodies, the trend in recent years had been towards interpreting domestic legislation in accordance with international instruments.

37. In reply to Mr. Ahmed, she said that the Government intended to implement the provisions of the Convention on the Rights of the Child by amending current legislation, enacting new legislation and modifying administrative practice in areas such as adoption. A national follow-up committee composed of representatives of the Government and non-governmental organizations had been set up to assess progress in that area. In any case, the superior interests of the child were a fundamental consideration both in family law and in the area of adoption.

38. Ms. WIJEWARDENA (Sri Lanka), replying to Mr. Riedel and Ms. Bonoan-Dandan, emphasized that her Government attached great importance to economic, social and cultural rights and that the Covenant was, therefore, widely publicized in all three languages and figured prominently in human rights education programmes at all levels of the educational system. For their part, NGOs publicized the Covenant as part of their activities at the

local and the national levels. Despite the armed conflict, there had been no change in the level of priority given to education in economic, social and cultural rights.

39. Mr. GRISSA asked whether the provisions of the circular concerning the recruitment of public-sector officials in proportion to the population's ethnic composition were merely a goal or had already been implemented.

40. Mr. MALIYADDE (Sri Lanka) said that those provisions were already strictly applied and that public-sector recruitment was therefore taking place in proportion to the size of each ethnic group within the total population.

41. The Chairperson invited the delegation of Sri Lanka to summarize its written replies to questions 10 to 15.

42. Ms. JEGARAJASINGHAM (Sri Lanka) said that the Constitution of Sri Lanka protected citizens from all discrimination on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any other grounds. Any violation of fundamental rights enshrined in the Constitution was justiciable before the Supreme Court. The recently created Human Rights Commission was also competent to investigate complaints of such violations. The proposals for constitutional reform aimed at further strengthening the anti-discrimination provisions by mandating the President to establish within three months of the Constitution's entry into force a commission to undertake a comprehensive review of all discriminatory legislation with a view to reform.

43. Since Sri Lanka was a multi-ethnic, multi-religious society, the rights and obligations of women belonging to certain groups in matters of family relations and property continued to be governed by customary or religious law. The Government had nevertheless accepted the concept of the universality of human rights, a concept enshrined in the Sri Lankan Women's Charter of 1993. It had made a firm commitment to take steps to eliminate discrimination against women in all matters relating to marriage and family relations, but it had to approach the question of reform with caution as some minorities could perceive the process as undermining their own rules and as an infringement of their right to culture and their freedom of religion. Thus the Government introduced reforms only on the initiative of the communities concerned.

44. With regard to legislation against discrimination in employment, public-sector and blue-collar workers could challenge unequal wages in the competent body (the Constitution and Wages Board). In the private sector, pay issues were governed by collective agreements or by the orders of the Commissioner of Labour.

45. Persons of Indian origin in Sri Lanka were not subject to any discrimination in the allocation of funds for the development of education. Since the State took over the plantation schools between 1977 and 1980, a number of projects had been set up to improve the situation in those schools, most notably one initiated in 1986 with the help of international organizations, which had achieved considerable success.

46. In 1996, the Government had enacted legislation on the rights of persons with disabilities, including an article protecting such persons from any discrimination on the grounds of their disability in recruitment or in admission to an educational institution. If that provision was contravened, the persons affected, or the National Council for Disabled Persons on their behalf, could apply to the High Court in their province of residence. The Government had also initiated action on the education and training of disabled children and adults in order to provide them with job opportunities. A majority of the members of the National Council for Disabled Persons were from non-governmental organizations. The Council had set up a committee to prepare guidelines on accessibility to the built environment in order to facilitate the mobility of disabled persons.

47. There was no discrimination against the 7,000 to 9,000 persons with HIV/AIDS in Sri Lanka.

48. Mr. TEXIER asked what was being done to ensure respect for the principle of equal pay for equal work, particularly in the private sector; whether men and women had the same career opportunities; and what measures were taken to prevent all discrimination on the grounds of sex, origin or religion in recruitment and promotion.

49. Mr. RIEDEL asked what measures had been taken to increase the number and qualifications of teachers in schools attended by Tamil children, and whether the steps taken to help plantation schools involved other establishments than those attended by Tamil children, in which case such measures would not specifically help to correct discrimination against Tamils. He said he would also welcome information on the programmes of the Swedish International Development Agency (SIDA) and the German Agency for Technical Cooperation (GTZ) in that area.

50. Mr. SADI asked why the minimum age for marriage was still set at 12 for Muslim girls when it had been raised to 18 for girls from other communities. There was no justification in Islam for such a provision, which in any case contravened the Convention on the Rights of the Child and could be interpreted as discriminatory.

51. Mr. AHMED said that, although the Sri Lankan Constitution guaranteed equality of employment for women in the public sector, some sources claimed that Sri Lankan women had no legal protection against discrimination in employment in the private sector, where they were often paid less for equal work and where they had difficulty in obtaining managerial positions, even though they accounted for half the working population in the formal sector. Despite the fact that the country had produced a succession of charismatic women political leaders, Sri Lankan women's participation in political life was very limited and they occupied only 7 per cent of administrative and managerial positions. It would be good to know how the Government intended to promote change that would give Sri Lankan women the place they deserved in society.

52. Mr. THAPALIA asked what factors hindered women's promotion to posts of responsibility, in which they were under-represented, and what the Government

intended to do to ensure legal protection for women employed in the private sector against discrimination which meant they received lower pay for equal work.

53. Ms. JIMENEZ BUTRAGUEÑO asked what the Sri Lankan Government had done to implement the provisions of the Convention on the Elimination of All Forms of Discrimination against Women and what progress had been made in such areas as family law, general civil law, criminal law, labour law and commercial law. She also asked if there was still discrimination against women in everyday life, particularly under the systems of customary law and Muslim law.

54. Mr. CEAUSU observed that, contrary to what was stated in paragraph 59 of the initial report, in several articles of the draft constitutional reform the distinction between citizens and non-Sri Lankans continued to apply in the enjoyment of certain rights. It would therefore be necessary to clarify the current situation of non-Sri Lankans, especially with regard to the enjoyment of social rights and the right to work.

55. In addition, he found it unacceptable that in certain spheres the State left it to the religious communities to bring legislation into line with the international commitments undertaken by the State. Thus, although the Sri Lankan delegation stated that there was no discrimination on the grounds of religion, the raising of the age of marriage to 18 years in order to protect girls' health and allow them to continue their studies did not apply to Muslim girls. The Government should accept its responsibilities and not create discrimination based on religious considerations.

56. Mr. PILLAY said he found it strange that, in cases of wage disparities, women employed in the private sector could not have recourse to the Constitution, particularly in view of article 12.2; he asked whether the fact that no such case of discrimination had been brought before the courts was due to women's ignorance of their rights or to the cost of proceedings.

57. Mr. ADEKUOYE said that, despite the Government's public policy on languages, according to some sources - including the Government itself - it had not been possible to implement the provisions of official texts, notably circular 15/90, owing to a lack of Tamil-speaking staff, many official positions having remained unfilled in the Tamil areas of the north and the east, with the result that the Tamil population had fewer educational and work opportunities in the regions where they lived.

58. Ms. JEGARAJASINGHAM (Sri Lanka) emphasized that women had taken advantage of the opportunities offered by the introduction of free education in 1940 to gain access to higher education and in that way overcome some of the obstacles to their advancement. Women now made up a significant proportion of the working population and their mobility had increased. In spite of that progress, however, there were still certain limitations on their participation in development activities. Action had been taken, as part of teaching programmes, to make girls more aware of their rights and the experience gained had been used to help other target groups, in collaboration with non-governmental organizations. Wage disparities between men and women were small in Sri Lanka and the gaps were narrowing.

59. In the course of following up the new law on disabled persons, the Government had endeavoured to promote the creation of special educational establishments, and had instituted a day of the disabled and drawn up a number of plans of action during a series of workshops. The various plans were available to the members of the Committee, who would thus be persuaded that the Government of Sri Lanka did not confine itself to words but took concrete action.

60. Ms. PERERA (Sri Lanka) confirmed that the minimum age for marriage had been 12 until it had been raised to 18 by the 1995 amendment. The amendment had not been applied to Muslims owing to very strong opposition from a number of groups representing that community.

61. In order to ensure the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, Sri Lanka had adopted a Women's Charter which incorporated the principles of the Convention, and under the Charter a National Women's Committee to supervise its implementation. In addition, the Ministry for Women's Affairs had drawn up a comprehensive plan of action aimed at bringing domestic legislation and administrative practice, inter alia, into line with the provisions of the Convention. Each ministry, moreover, had been assigned a coordinator to implement the national plan of action. The Sri Lankan Law Commission had also been asked to identify all discriminatory legislative provisions with a view to reform. It was in the spirit of the principles of the Convention that the age of marriage had been raised and much had been done to combat violence against women.

62. Ms. WIJEWARDENA (Sri Lanka) said that the proportion of women in political life in Sri Lanka was indeed low, but that was a universal tendency and the figure should not be considered in isolation. In Sri Lankan society, the idea that women could play a leading role in family life, civil society and public life had long been acknowledged. Women were traditionally very active in non-governmental organizations, where they had been in the vanguard of humanitarian and social action and rural development, and thus they had for a long time played an important role in society, the family and politics.

The meeting rose at 1 p.m.